IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-10-2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

WRIT APPEAL No.892 of 2001

M.Kalyanasundaram ... Appellant

-vs-

1. Bhakthalalitheeswarar Temple
Pudukottai Devasthanam, rep. by
E.O Ambukoil, Alangudi Taluk,
Pudukottai District.

2. Pitchaiya Pillai

3. Special Tahsildar
(U.D.R. Scheme)
Kandarvakottai,
Pudukottai District.

4. Revenue Divisional Officer
Pudukottai.

5. District Revenue Officer
Pudukottai. ... Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order, dated 06.03.2000 made in W.P.No.530 of 1992 WP.530/92 filed under Article 226 of the Constitution of India to call for the records from the 5th respondent relating to his proceedings Na.Ka.No.D3/59208/90 dated 23.05.91 confirming the order of the 4th Respondent passed in his proceedings Na.Ka.No.19118/85/A10 dated 22.05.87 and the 3rd respondent order passed in his proceedings தொ,மு,வ, எண்.544.85.A4 dated 30.09.85 by issuing a Writ of Certiorarified Mandamus and quash the same and direct the 3rd respondents to re-transfer the patta in the name of the petitioner.

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For appellant : Mr.V.Sanjeevi
For respondents : Mr.T.Chandrasekaran, Spl.G.P (HR & CE)

J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN,J)

Aggrieved by the order of dismissal, dated 06.03.2000, made in W.P.No.530 of 1992, passed by the learned single Judge, this writ appeal has been preferred by the petitioner therein. The writ petition had been filed seeking an order of certiorarified mandamus to call for the records relating to the Proceedings of the fifth respondent in Na.Ka.No.D3/59208/90, dated 23.05.1991, confirming the order passed by the fourth respondent in Na.Ka.No.19118/85/A10, dated 22.05.1987 and the original order of the third respondent in Tho.Mu.Va.No.544/85/A4, dated 30.09.85.

2. It is an admitted fact that Pudukottai Samasthanam was merged with Union Terriroty of India in the year 1948 and accordingly, Sri Bhakthalalitheeswarar Temple, Alangudi, one among the Temples under Administration of Pudukottai Devasthanam, came under the control of the District Collector, Pudukottai, Tamil Nadu State. As per the settlement proceedings, initiated, settlement Tahsildar conducted enquiry under Section 11 of The Tamil Nadu Minor Inam (Abol. and Con. Into Ryotwari) Act, 1963, (herein after referred to as the Act), with regard to claims made by persons for Riathwari patta under the Act in respect of the inam lands. The land in question, bearing S.No.60/3. 4 and 5 and 98/6 in Ambukovil Village, Alangudi Taluk, Pudukottai District was treated as inam lands in the settlement proceedings. While so, on the request of one Smt.Anjugathammal, before the Settlement Officer, service inam patta was granted in the name of the appellant / petitioner, after the death of her husband, Lavanathar, to do pathali job (store keeping) in the Temple. The Settlement Officer after conducting enquiry had issued Riathwari service Inam patta under Section 11 of the Act 30 of 1963 in the name of the appellant / petitioner herein, by his Proceedings under the Act in No. 30/63/A8/487/68, dated 21.08.1968. The petitioner's father, Ondimuthu Pillai, as guardian was performing the duty of pathali job in the temple, since the appellant / petitioner was a minor, at that time.

3. In the counter filed by the first respondent in the writ petition, it has been admitted that the service inam patta was granted in the name of the petitioner, who was a minor represented by his father and guardian Ondimuthu Pillai. The first respondent has further stated in the counter that Ondimuthu Pillai was subsequently removed from service and the second respondent was appointed to the Office of the Temple and hence, it was addressed to the Settlement authorities by the first respondent for cancelling the patta already issued in the name of the petitioner and for

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re-grant the same in the name of the second respondent, since he was rendering the said service to the temple, in the place of Ondimuthu Pillai.

4. It is not in dispute that Riathwari Inam patta was granted only to the appellent / petitioner, while he was a minor, as per Section 8 of The Tamil Nadu Tamil Nadu Minor Inam (Abol. and Con. Into Ryotwari) Act, 1963. As the appellant was a minor, his father was permitted to perform the pathali job in the Temple.

5. Mr.V.Sanjeevi, learned counsel appearing for the appellant submitted that the third respondent, who had no authority or legal competency, as per the Act to transfer the patta, had passed the order, dated 30.09.1985 transferring the patta in the name of the second respondent, without providing any opportunity to the appellant / petitioner, with the condition to perform the above said service to the temple. Aggrieved by which, the appellant had filed an appeal, before the fourth respondent. As it was dismissed, he preferred revision before the fifth respondent and then, the writ petition. According to the learned counsel for the appellant, the issue involved in the matter of dispute was not legally considered in the impugned order passed in the writ petition.

6. In the instant case, the person, in whose name inam patta having been granted was a minor. The main contention of the learned counsel for the appellant is that the prescribed authority has not taken any action and the impugned order is passed by the Tahsildar, who is not the competent authority under the Rules and on this ground alone, the impugned order has to be quashed. According to the learned counsel for the appellant, the order passed by the third respondent is totally contrary to the provision under Section 21 (7) (b) of the Act.

7. As contemplated under Section 7 (a) of the Act, 1963, so long as the service holder renders the service, he shall be entitled to occupy permanently the lands in respect of which, he is entitled to patta under Section 8, however, which is subject to the payment of the assessment fixed in respect of such lands. Admittedly, patta was issued in the name of the appellant / petitioner by the competent authority and Ondimuthu Pillai, father and guardian of the appellant / petitioner was performing the pathali job of the temple, since the appellant was a minor. It is a settled proposition of law that the patta can be cancelled or re-granted only as per the procedure contemplated under Act 30 of 1963 and the rules framed there under.

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8. Sub Section 7(b) of Section 21 of the Act reads as follows :

> " If the service-holder fails to render the service, the prescribed officer shall, after such inquiry and after such notice to the service-holder as may be prescribed in this behalf, notify such failure in such manner as may be prescribed. He shall then declare that the service-holder's right to occupy permanently

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the land under clause (a) shall cease and determine, and the institution shall be at liberty to make such arrangement as it thinks fir tof the performance of the service and shall be entitled to hold the land as its absolute property subject, however, to the payment of the assessment fixed therefor [under Section 16 or under Section 16-A as the case may be].

Explanation I – For the purposes of this Section –

(i) service-holder includes his heirs;

(ii) non-performance of the service due to illness or other temporary disability shall not be deemed to be failure to render service, provided that the service-holder makes alternative arrangements for rendering the service during the period of such illness or of other temporary disability."

9. As contended by the learned counsel for the appellant, it is quite clear that there is no bar in granting Riathwari patta in the name of the appellant, who was a minor represented by his guardian for the purpose of rendering the service.

10. The first respondent has admitted in his counter filed in the writ petition that Ondimuthu Pillai, father of the appellant / petitioner was performing the duties of pathali job in the Temple. As per Section 21 (7) (b) of the Act, non performance of the service, due to illness or other temporary disability, shall not be deemed to be failure to render service, provided that the service holder makes alternative arrangement for rendering the service during the period of such illness or other temporary disability.

11. In the above context, it is pertinent to note Rule 19 of The Tamil Nadu Minor Inams (Abol. & Con. Into Ryotwari) Rules, 1965, which reads as follows :

" 19. Enquiry under Sections 21 (6) (b) and 21 (7) (b) – (1) The enquiry under clause (b) of sub-section (6) of section 21 and clause (b) of sub-section (7) of section 21 shall be either suo motu or on application from the institution concerned or from other persons interested and shall be conducted by the Revenue Divisional Officer of the division concerned.

(2) Notice regarding the date, time and place of enquiry shall be in Form No.12 in respect of the enquiry under clause (b) of sub-section (6) of section 21 and in Form No.13 in respect of the enquiry under clause (b) of sub-section (7) of section 21 and shall be served on the service holder concerned. A copy of the notice shall also be served on the applicant and on the institution, if the institution is not the applicant.

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(3) The Revenue Divisional Officer shall make a summary enquiry into the matter. He shall hear the service-holder, the institution and other person interested, if any, and give his decision after giving them a reasonable opportunity for adducing evidence.

(4) If the decision aforesaid is that there has been failure to render the service by the service-holder, the Revenue Divisional Officer shall notify such failure in Form No.14 in respect of cases falling under clause (b) of sub-section (6) of section 21 and in Form No.15 in respect of cases falling under clause (b) of sub-section (6) of section 21 and in Form No.15 in respect of cases falling under clause (b) of sub-section (7) of section 21 and shall publish sucb failure.

(5) The decision of the Revenue Divisional Officer shall be communicated to the parties concerned.

(6) The declaration referred to in clause (b) of sub-section (6) of section 21 and in clause (b) of sub-section (7) of section 21 shall be made immediately after the publication of the notification referred to in sub-rule (4) and shall be in Form No.16 or 17, as the case may be. Copies of the declaration shall be served on the service-holder and on the institution. "

12. It is quite clear that the competent authority to conduct enquiry and pass appropriate order under Section 21 (7) (b) of the Act is only the concerned Revenue Divisional Officer and not the Tahsildar. Hence, the order dated 30.09.1985 passed by the third respondent, a Tahsildar, as such without authority is illegal, as the same is contrary to the provision of the Act and the rules framed there under. But, in the appeal, the fourth respondent has simply confirmed the order, on the ground of non-appearance of the appellant / petitioner, without going into the legality of the order. Again the same was confirmed by the District Revenue Officer, fifth respondent herein in the revision. Though the competency and authority of the third respondent in passing the order, dated 30.09.1985 has been questioned by the appellant in the writ petition, the same was not considered, while passing the order in the writ petition. Therefore, we are of the considered view that the writ appeal has to be allowed, solely on the ground that the order passed by the third respondent is illegal, since the same was passed without any legal competency or authority, by violating Section 21 (7) (b) of The Tamil Nadu Minor Inams (Abol. & Con. Into Ryotwari) Act, 1963 and Rule 19 of The Tamil Nadu Minor Inams (Abol. & Con. Into Ryotwari) Rules, 1965.

13. It is of course true that the order of the Tahsildar was confirmed in appeal by the Revenue Divisional Officer and by the District Revenue Officer in revision. However, as observed by the Supreme Court in BARADAKANTA MISHRA v. HIGH COURT OF ORISSA AND ANOTHER (AIR 1976 SC 1899),

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if the order of the initial authority is void an order of the appellate authority cannot make it valid.

14. In the result, the writ appeal is allowed and the impugned order and the orders passed by the respondents 3 to 5 are set aside. However, it is made clear that the competent authority is free to pass appropriate orders, if it is needed, as contemplated under the Act 30 of 1963 and the rules there under. There is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

tsvn

To

1. The Executive Officer
   Bhakthalalitheeswarar Temple
   Pudukottai Devasthanam, rep. by
   Ambukoil, Alangudi Taluk, Pudukottai District.

2. The Special Tahsildar
   (U.D.R. Scheme)
   Kandarvakottai,
   Pudukottai District.

3. The Revenue Divisional Officer
   Pudukottai.

4. The District Revenue Officer
   Pudukottai.

1 cc To Mr.V.Sanjeevi, Advocate, SR.63994.

W.A.No.892 of 2001

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